

**This Opinion Is Not a  
Precedent of the TTAB**

Mailed: March 22, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

—————  
Trademark Trial and Appeal Board  
—————

*In re Harriman Hotel, LLC.*  
—————

Serial No. 90096825  
—————

Marcy L. Sperry of Sperry IP Law LLC dba Vivid IP,  
for Harriman Hotel, LLC.

Vivian Micznik First, Trademark Examining Attorney, Law Office 114,  
Nicole Nguyen, Acting Managing Attorney.  
—————

Before Zervas, Lynch and Coggins,  
Administrative Trademark Judges.

Opinion by Zervas, Administrative Trademark Judge:

On August 6, 2020, Harriman Hotel, LLC (“Applicant”) filed an application (which was assigned application Serial No. 90096825) for registration on the Principal Register of the proposed standard character mark THE HARRIMAN HOTEL for:

Real estate services, namely, rental property management; real estate brokerage of condominiums and penthouses (International Class 36);

Hotel services; resort hotel services; restaurant and bar services (International Class 43); and

Health spa services for health and wellness of the mind, body and spirit (International Class 44).

Applicant claims a bona fide intention to use the proposed mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b), for each service. Applicant has disclaimed the term HOTEL.

The Examining Attorney issued a first final refusal of registration of Applicant's mark on the ground that the proposed mark is primarily merely a surname under Section 2(e)(4) of the Trademark Act, 15 U.S.C. § 1052(e)(4). Applicant responded with arguments and evidence in a first request for reconsideration. The Examining Attorney was not persuaded and issued a second final refusal of registration. Applicant then submitted a second request for reconsideration and appealed to the Board. The Board suspended the appeal and remanded the application to the Examining Attorney for consideration of the second request for reconsideration. The Examining Attorney denied the request, and the Examining Attorney and Applicant then filed briefs.<sup>1</sup>

We affirm the Section 2(e)(4) refusal to register.

---

<sup>1</sup> The Examining Attorney filed definitions from the Collins Dictionary with her brief, and asks us to take judicial notice of these definitions. (9, 10 and 11 TTABVUE). Applicant submitted a definition from the same dictionary with its reply brief, and asks us to take judicial notice of this definition. (11 TTABVUE 6). The Board may take judicial notice of dictionary evidence, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including from online dictionaries that exist in printed format or regular fixed editions. *In re Red Bull GmbH*, 78 USPQ2d 1375, 1377 (TTAB 2006). We discuss their requests later in this opinion.

Citations to the briefs are to TTABVUE, the Board's online docketing system. Specifically, the number preceding "TTABVUE" corresponds to the docket entry number, and any number(s) following "TTABVUE" refer to the page number(s) of the docket entry where the cited materials appear. Page references to the application record are to the downloadable .pdf version of the United States Patent and Trademark Office's Trademark Status & Document Retrieval (TSDR) system. *See Turdin v. Trilobite, Ltd.*, 109 USPQ2d 1473, 1476 n.6 (TTAB 2014).

## A. Discussion

Section 2(e)(4) precludes registration on the Principal Register of a mark that is “primarily merely a surname” without a showing of acquired distinctiveness under Trademark Act § 2(f), 15 U.S.C. § 1052(f). “A mark is primarily merely a surname if the surname is the primary significance of the mark as a whole to the purchasing public.” *Earnhardt v. Kerry Earnhardt, Inc.*, 864 F.3d 1374, 123 USPQ2d 1411, 1413 (Fed. Cir. 2017) (citation and internal quotation marks omitted); *see also In re Beds & Bars Ltd.*, 122 USPQ2d 1546, 1548 (TTAB 2017); *In re United Distillers plc*, 56 USPQ2d 1220, 1221 (TTAB 2000).

When faced with a Section 2(e)(4) refusal of a term in standard character form, we consider the impact the applied-for term has, or would have, on the purchasing public because “it is that impact or impression which should be evaluated in determining whether or not the primary significance of a word when applied to a product [or used in connection with a service] is a surname significance.” *In re Harris-Intertype Corp.*, 518 F.2d 629, 186 USPQ 238, 239 (CCPA 1975) (quoting *Ex parte Rivera Watch Corp.*, 106 USPQ 145, 149 (Comm’r Pat. 1955)).

There is no rule as to the kind or amount of evidence necessary to show that the applied-for mark would be perceived as primarily merely a surname. This question must be resolved on a case-by-case basis. *In re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652, 653 (Fed. Cir. 1985). We examine the entire record to determine the primary significance of a term. If we have any doubt on the issue based on the record before us, our practice in Section 2(e)(4) cases is generally “to resolve

such doubts in favor of applicant.” *In re Benthin Mgmt. GmbH*, 37 USPQ2d 1332, 1334 (TTAB 1995).

In *Darty*, the Federal Circuit considered several inquiries in determining whether the purchasing public would perceive a proposed mark as primarily merely a surname, including: (i) whether the applicant adopted a principal’s name and uses it in a way that reveals its surname significance; (ii) whether the term has a non-surname “ordinary language” meaning; and (iii) the extent to which the term is encountered as a surname. 225 USPQ at 653. The Board’s often cited “*Benthin* factors”<sup>2</sup> are also examples of inquiries that may lead to evidence regarding the purchasing public’s perception of a term’s primary significance. These inquiries are not exclusive, and any of these circumstances – alone or in combination – and any other relevant circumstances may be considered when making this determination. *In re Eximius Coffee, LLC*, 120 USPQ2d 1276, 1277-78 (TTAB 2016).

We now consider the factors relevant to this appeal.

### **1. The extent to which the term is encountered as a surname**

“First, we consider the frequency of, and public exposure to, [HARRIMAN] as a surname ... keeping in mind that “[t]he relevant question is not simply how frequently

---

<sup>2</sup> In *Benthin*, the Board stated that “factors” to be considered in determining whether a term is primarily merely a surname include (i) the degree of a surname’s rareness; (ii) whether anyone connected with applicant has that surname; (iii) whether the term has any recognized meaning other than that of a surname; (iv) whether the term has the “structure and pronunciation” of a surname; and (v) whether the stylization of lettering is distinctive enough to create a separate commercial impression. Where, as here, the mark is in standard characters, it is unnecessary to consider the fifth factor. *In re Yeley*, 85 USPQ2d 1150, 1151 (TTAB 2007). Applicant agrees. Applicant’s brief, 6 TTABVUE 13.

a surname appears . . . but whether the purchasing public for Applicant's services is more likely to perceive Applicant's proposed mark as a surname rather than as anything else." *In re tapio GmbH*, 2020 USPQ2d 11387, at \*9 (TTAB 2020) (internal citation omitted) (quoting *In re Beds & Bars*, 122 USPQ2d at 1551).

For surname significance of HARRIMAN, the Examining Attorney cites to (i) the surname database of Lexis.com showing HARRIMAN appearing 8,866 times in locations such as Delaware, California, Arkansas, Florida, and Missouri;<sup>3</sup> (ii) a definition from merriam-webster.com which provides that "Harriman" is a biographical name for William Averell Harriman (1891 – 1986), "an American businessman, diplomat, and politician";<sup>4</sup> and (iii) a wikipedia.com<sup>5</sup> entry for "Harriman" which states, inter alia, "**Harriman** or **Hariman** (variant Herriman) is a surname derived from the given name Herman, and in turn occurs as a placename derived from the surname in the United States" (emphasis in original).<sup>6</sup>

Applicant states that the Examining Attorney conceded that "Harriman" is a rare surname,<sup>7</sup> and the Examining Attorney states that "Applicant contends that the surname HARRIMAN is rare ... because HARRIMAN ranked 6,694<sup>th</sup> in the 2010 U.S.

---

<sup>3</sup> December 2, 2020 Office Action, TSDR 4.

<sup>4</sup> *Id.* at TSDR 14; *see also* October 7, 2021 Req. for Recon., TSDR 197; January 21, 2021 Resp., 13 TTABVUE 42.

<sup>5</sup> April 7, 2021 Office Action, TSDR 12-13

<sup>6</sup> April 7, 2021 Office Action, TSDR 12.

<sup>7</sup> Applicant's brief, 6 TTABVUE 8.

Census list of surnames occurring 100 or more times, with a total count of 5,045 people and a proportion of 1.71 people per 100,000.”<sup>8</sup>

Although any “strictly numerical approach to a surname analysis has been squarely rejected,” *In re Adlon Brand GmbH & Co. KG*, 120 USPQ2d 1717, 1721 (TTAB 2016) (citing *Darty et Fils*, 225 USPQ at 653), the evidentiary analyses in the Board’s cases finding infrequently encountered surnames show much lower frequency among the United States population than that of “HARRIMAN.” *See, e.g., Beds & Bars*, 122 USPQ2d at 1551 (evidence that only five people in the United States had the surname “Belushi” “establish[ed] that it is an exceedingly rare surname”); *Eximius Coffee*, 120 USPQ2d at 1280-83 (the record showed that “Aldecoa” was “a surname, but one that is rarely encountered by the consuming public,” where it appeared only 233 times in the 2000 U.S. Census); *In re Adlon*, 102 USPQ2d at 1720-21 (the examining attorney’s evidence that “Adlon” was the surname of “approximately 75 individuals in the United States” demonstrated that “ADLON is a surname, albeit a rare one”); *In re Yeley*, 85 USPQ2d at 1151-52 (evidence that the surname “Yeley” appeared 147 times in the nationwide LEXISNEXIS phone directory supported a finding that it “is a rare surname.”). Additionally, while there is limited evidence of present-day exposure of the U.S. population to William Averell Harriman, *see* discussion *infra*, the record establishes that William Averell Harriman held

---

<sup>8</sup> Examining Attorney’s brief, 10 TTABVUE 5. Applicant submitted search results on a U.S. Census database showing HARRIMAN ranked 6,694<sup>th</sup>. May 6, 2022 Req. for Recon., TSDR 19-21.

positions of prominence during the not too distant past, and thus may be known to a segment of the U.S. population.

Applicant presented evidence that the following marks contain surnames ranking higher than “Harriman” in the 2010 U.S. Census list of surnames occurring 100 or more times, and nonetheless were registered:

- THE BAXTER HOTEL: “Baxter” ranked 706<sup>th</sup>, appearing 16.62 times per 100,000 people.
- THE CLEMENT HOTEL: “Clement” ranked 1,505<sup>th</sup>, appearing 8.08 times per 100,000 people.
- THE ELLIS HOTEL: “Ellis” ranked 131<sup>st</sup>, appearing 64.06 times per 100,000 people.
- THE FREDERICK HOTEL: “Frederick” ranked 833<sup>rd</sup>, appearing 14.03 times per 100,000 people.
- THE JORDAN HOTEL: “Jordan” ranked 116<sup>th</sup>, appearing 70.65 times per 100,000 people.
- THE OLIVER HOTEL: “Oliver” ranked 264<sup>th</sup>, appearing 39.29 times per 100,000 people.
- THE RADCLIFFE HOTEL: “Radcliffe” ranked 5,812<sup>th</sup>, appearing 2.02 times per 100,000 people.
- THE SHEPHERD HOTEL: “Shepherd” ranked 557<sup>th</sup>, appearing 20.50 times per 100,000 people.
- THE STANLEY HOTEL: “Stanley” ranked 321<sup>st</sup>, appearing 32.84 times per 100,000 people.
- THE WILSON HOTEL (stylized): “Wilson” ranked 14<sup>th</sup>, appearing 271.84 times per 100,000 people.<sup>9</sup>

---

<sup>9</sup> May 6, 2022 Req. for Recon., TSDR 87-121.

These Principal Register registrations do not claim acquired distinctiveness under Trademark Act § 2(f), 15 U.S.C. § 1052(f), but do contain disclaimers of the word HOTEL.

The problem with Applicant's showing is that, other than RADCLIFFE,<sup>10</sup> the second term in each registered mark has non-surname significance in American English, either as a given name (Baxter, Ellis, Clement, Frederick, Jordan, Oliver, Stanley, Wilson), or as a defined term ("clement" meaning "forbearing; lenient; merciful"; "shepherd" meaning "a person whose job it is to look after sheep").<sup>11</sup> (The Examining Attorney did not submit a definition for "Radcliffe"). The registrations and related Census rankings submitted by Applicant thus have little relevance to the registrability of Applicant's proposed mark. The single registration for THE RADCLIFFE HOTEL and Census ranking for "Radcliffe" do not persuade us that Applicant's proposed mark should be registered.

We point out that although the registrations discussed above are of record, we are not privy to the registration file histories which may have included evidence not before us in this appeal. The same applies to those additional registrations for THE [ALLEGED NAME] HOTEL marks in the record for which Census information has

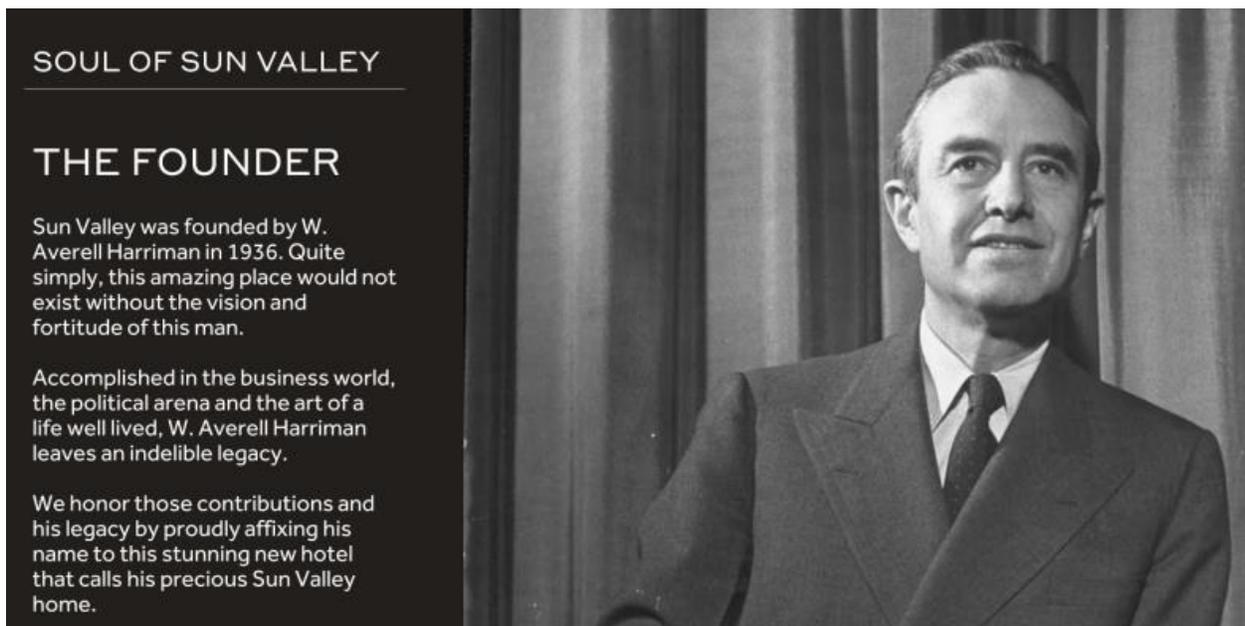
---

<sup>10</sup> Applicant seeks judicial notice of a definition of "Radcliffe" submitted with its reply brief. We do not take judicial notice of this definition because it is for "British English." Reply brief, 11 TTABVUE 6. We take judicial notice of the definition of "Radcliffe" from <https://www.merriam-webster.com/dictionary/Radcliffe> (accessed on March 15, 2023), which identifies only the surname of an English novelist.

<sup>11</sup> 8 and 9 TTABVUE; 10 TTABVUE 14-32. We take judicial notice of the definitions submitted by the Examining Attorney with her brief.

not been provided.<sup>12</sup> Moreover, it is well settled that the Board is not bound by previous decisions of examining attorneys. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001); *see also In re Rodale Inc.*, 80 USPQ2d 1696, 1700 (TTAB 2006); *In re City of Hous.*, 101 USPQ2d 1534, 1542 (TTAB 2012), *aff'd*, 731 F.3d 1326, 108 USPQ2d 1226 (Fed. Cir. 2013). The existence of these registrations does not dictate our decision in this appeal.

Further, Applicant's website associates Applicant with Mr. Harriman and his credentials and accomplishments.<sup>13</sup> *See, e.g.:*



---

<sup>12</sup> *See* registrations for THE MELROSE HOTEL, THE ST. CLAIR HOTEL, THE WHITBY HOTEL and THE ELIOT HOTEL. May 6, 2022 Req. for Recon., TSDR 87-121.

<sup>13</sup> October 7, 2021 Req. for Recon., TSDR 14, indicating the URLs for the website are: <https://makrhospitality.com/harriman> and <https://static1.squarespace.com/static/5c79c792809d8e40ecle8f82/t/60d120abc0468l44dbd75149/1624318128132/The+Harriman+Hotel+W+Averell+Harriman.pdf>. Although Applicant asserts these printouts are from its webpages, one states “Currently Under Construction” and another states “Confidential & Proprietary.” *Id.*, TSDR 108-18.

We particularly note Applicant's statement that it "honors those contributions and his legacy by proudly affixing his name to this stunning new hotel that calls his precious Sun Valley home."<sup>14</sup> This suggests that consumers are or will be exposed to Mr. Harriman's name on Applicant's website and that consumers hence are likely to view HARRIMAN, as it appears in Applicant's proposed mark, as a surname.

In sum, the evidence discussed above, including evidence from the Lexis database, the U.S. Census, Merriam-Webster Dictionary, Wikipedia and Applicant's website, "supports a finding that [HARRIMAN] is likely to be perceived by the public as a surname." *tapio*, 2020 USPQ2d 11387, at \*11. "While hardly a common surname, [HARRIMAN] is not so rarely encountered that consumers would fail to recognize it as a surname." *In re Six Continents Ltd.*, 2022 USPQ2d 135, at \*9 (TTAB 2022).

## **2. Whether anyone connected with Applicant has that surname HARRIMAN**

The Examining Attorney presented no evidence and no argument that anyone associated or connected with Applicant has the HARRIMAN surname. The absence of a namesake "does not, in itself, reduce the likelihood that the public would perceive the mark as a surname." *In re Adlon*, 120 USPQ2d at 1724; *see also In re Thermo LabSystems Inc.*, 85 USPQ2d 1285, 1287 (TTAB 2007) ("The fact ... that 'a proposed mark is not applicant's surname, or the surname of an officer or employee, does not tend to establish one way or the other whether the proposed mark would be perceived

---

<sup>14</sup> *Id.*

as a surname.”) (quoting *In re Gregory*, 70 USPQ2d 1792, 1795 (TTAB 2004). This factor hence is neutral.

### **3. Whether HARRIMAN has any recognized meaning other than that of a surname**

To establish the lack of an English language meaning for “Harriman,” the Examining Attorney relies on “negative dictionary” evidence – the Merriam-Webster definition mentioned above which identifies only William Averell Harriman.<sup>15</sup> The lack of an English language meaning of the term favors the Examining Attorney’s position that the term is primarily a surname.

Applicant argues that other evidence establishes that “Harriman” has a variety of recognized non-surname meanings, including geographic, scholastic, popular culture, and historical connotations.<sup>16</sup> Applicant’s primary argument is that William Averell Harriman is an historical figure, and hence his surname would not likely be perceived by consumers as primarily a surname.

The decisions addressing historical names generally draw a line between widely recognized names that are almost exclusively associated with a specific historical figure (are thus not considered primarily a surname), *see, e.g., Lucien Piccard Watch Corp. v. Crescent Corp.*, 314 F. Supp. 329, 165 USPQ 459 (S.D.N.Y. 1970) (DA VINCI

---

<sup>15</sup> www.merriam-webster.com, January 14, 2020 Office Action, TSDR 8. “Negative dictionary” evidence may be considered. *See In re Adlon*, 120 USPQ2d at 1719 (“To show that ADLON has no other apparent meaning, she has submitted ‘negative dictionary’ evidence, that is, evidence showing that the term ADLON cannot be found in the dictionaries ... and the result of an electronic ‘place name’ search of THE COLUMBIA GAZETTEER OF THE WORLD, showing that ADLON does not appear therein.”).

<sup>16</sup> 6 TTABVUE 10.

not primarily merely a surname because it primarily connotes Leonardo Da Vinci), and names which are not widely recognized and hence not exclusively associated with a specific historical figure, and names which are only semi-historical in character and thus can be perceived as primarily merely a surname, *see, e.g., Frances Rothschild, Inc. v. U.S. Cosmetic Fragrance Mktg. Corp.*, 223 USPQ 817 (N.D. Tex. 1983) (ROTHSCHILD held primarily merely a surname despite being the surname of a historical banking family); *In re Pickett Hotel Co.*, 229 USPQ 760, 762 (TTAB 1986) (holding PICKETT SUITE HOTEL primarily merely a surname despite applicant's evidence that PICKETT was the name of a famous Civil War general); *In re Champion Int'l Corp.*, 229 USPQ 550, 551 (TTAB 1985) (MCKINLEY held primarily merely a surname despite being the surname of a deceased president).

Clearly, William Averell Harriman was a prominent and accomplished businessman and politician who served as chairman of the Union Pacific Railroad, Governor of New York, Ambassador to the United Kingdom, Ambassador to the Soviet Union, Secretary of Commerce, Assistant Secretary of State and a Democratic presidential candidate in 1956.<sup>17</sup> He also was the founder of Sun Valley Idaho, a winter sports destination.<sup>18</sup> The evidence, particularly the evidence of recent exposure to William Averell Harriman, however, does not support a finding that William Averell Harriman should be considered an historical figure.

---

<sup>17</sup> January 21, 2021 Resp., TSDR 13-42. *See also* April 7, 2021 Office Action, TSDR 14.

<sup>18</sup> October 7, 2021 Req. for Recon., TSDR 112-13.

Applicant states that Mr. Harriman was the subject of a New York Times bestselling book; several books document Mr. Harriman's impact on Sun Valley;<sup>19</sup> and Mr. Harriman has been written about numerous times in prominent publications such as Life Magazine.<sup>20</sup> Applicant's statements are based on references to Mr. Harriman in Google Books webpage printouts showing Life Magazine articles from 1936-1952, and New York Magazine in 1993 and 1997 editions.<sup>21</sup> Further, there is a two-paragraph article from the November 1986 issue of Skiing magazine titled "Harriman's Legacy";<sup>22</sup> and a paragraph in a 2006 article from The Lewiston Tribune referring to Mr. Harriman in connection with the naming of streets in Ketchum, Idaho.<sup>23</sup> The New York Times bestselling book appears to be Erik Larson's book published in 2020 titled "The Splendid and the Vile: A Saga of Churchill, Family, and Defiance During the Blitz," which is not about Mr. Harriman but contains references to Mr. Harriman.<sup>24</sup> Most of this material is not of a recent vintage or mentions Mr. Harriman in passing, and hence is not particularly helpful to Applicant.

---

<sup>19</sup> October 7, 2021 Req. for Recon., TSDR 15, 116 (from what Applicant asserts is its website, stating, "There are several books that document W. Averell Harriman's impact on Sun Valley including: Sun Valley: An Extraordinary History by Wendolyn Spence Holland [and] The Sun Valley Story by Van Gordon Sauter"). These three books appear to reference Mr. Harriman, and are not about Mr. Harriman.

<sup>20</sup> Applicant's brief, 6 TTABVUE 17.

<sup>21</sup> October 7, 2021 Req. for Recon., TSDR 176-94.

<sup>22</sup> October 7, 2021 Req. for Recon., TSDR 228-29.

<sup>23</sup> October 7, 2021 Req. for Recon., TSDR 232-22.

<sup>24</sup> October 7, 2021 Req. for Recon., TSDR 175-94.

Further, printouts from thefamouspeople.com list Mr. Harriman as its 16th highest ranked venture capitalist (of at least 37 entries).<sup>25</sup> At No. 15 is Timothy C. Draper and at No. 17 is James Altucher. There is no evidence in the record regarding these two similarly-ranked venture capitalists and thus we cannot determine the significance of a No. 16 ranking for Mr. Harriman.

Applicant also submitted printouts from the same website which identify Mr. Harriman as the 189th highest ranked diplomat (of over 1,000 entries) based on user votes and internet search trends.<sup>26</sup> At No. 190 is Adolph Dubs and at No. 191 is Charles Cotesworth Pinckney. There is no evidence in the record regarding these two similarly-ranked diplomats and we cannot determine the significance of a No. 189 ranking for Mr. Harriman.

Also, there is limited information as to how the individuals identified were chosen and ranked – the website states, without elaboration, “[t]his ranking is based on an algorithm that combines various factors, including the votes of our users and search trends on the internet.”<sup>27</sup> We thus find that this evidence has limited probative value.

In addition, we note that there are others within the Harriman family who may have had some notoriety, including William Averell Harriman’s wife Pamela Harriman (58th U.S. Ambassador to France and former wife of other notable

---

<sup>25</sup> October 7, 2021 Req. for Recon., TSDR 200-20.

<sup>26</sup> October 7, 2021 Req. for Recon., TSDR 222-26.

<sup>27</sup> October 7, 2021 Req. for Recon., TSDR 201.

persons),<sup>28</sup> William Averell's father and "railroad baron" E.H. Harriman,<sup>29</sup> and perhaps a brother named Roland Harriman.<sup>30</sup>

In view of the foregoing, we find that Applicant has not established that the term "Harriman" points only to one individual, who is an historical figure.

Applicant also relies on entries for:

- Harriman State Park in Idaho "[k]nown for its beautiful scenery and wildlife" and which has hosted more than 200,000 visitors in 2020.<sup>31</sup>
- Harriman State Park in New York which had over 1.5 million visitors between 2012 and 2013.<sup>32</sup>
- Harriman Hiking Trail, a "well-trafficked" trail that is a "go-to favorite of Sun Valley [Idaho] pedal pushers and skinny ski scooters in summer and winter."<sup>33</sup>
- Harriman Glacier in Alaska.<sup>34</sup>

---

<sup>28</sup> October 7, 2021 Req. for Recon., TSDR 33. Information about Pamela Harriman is available at <https://www.britannica.com/biography/Pamela-Harriman>, and we take judicial notice of this entry in the online version of "Britannica."

<sup>29</sup> October 7, 2021 Req. for Recon., TSDR 120.

<sup>30</sup> Jan. 21, 2021 Resp., TSDR 33; October 7, 2021 Req. for Recon., TSDR 122.

<sup>31</sup> May 5, 2022 Req. for Recon., TSDR 27; Jan. 21, 2021 Resp., TSDR 44-45. "The park's acreage was owned by Union Pacific Railroad investors from 1902 to 1977, serving as a cattle ranch and private retreat for the Harriman and Guggenheim families. It was deeded to Idaho for free in 1977 by Roland and W. Averell Harriman ...." *Id.*, at TSDR 33. *See also* April 7, 2021 Office Action, TSDR 13.

<sup>32</sup> May 6, 2022 Office Action, TSDR 54-61. *See also* April 7, 2021 Office Action, TSDR 13.

<sup>33</sup> May 5, 2022 Resp., TSDR 22.

<sup>34</sup> April 7, 2021 Office Action, TSDR 13.

- The name of three “metro” stations in New York.<sup>35</sup>
- The name of two “inhabited places,” Harriman, New York and Harriman, Tennessee.<sup>36</sup>
- The Harriman Institute at Columbia University, identified as “[t]he oldest and leading U.S. academic institution in Russian, Eurasian, and East European studies.”<sup>37</sup>
- “Harriman” as the given name of the fictional character Admiral Harriman Nelson in the television show “Voyage to the Bottom of the Sea” (1964-1968).<sup>38</sup>

With regard to the geographical locations, a term with surname significance may not be primarily merely a surname if that term also has a well-known geographical meaning. *In re Colt Indus. Operating Corp.*, 195 USPQ 75 (TTAB 1977) (holding FAIRBANKS not primarily merely a surname because the geographical significance of the mark was determined to be just as dominant as its surname significance). If a term has minor significance as a geographical term, its geographical significance will not dissipate its primary significance as a surname. *In re Hamilton Pharm. Ltd.*, 27 USPQ2d 1939, 1942 (TTAB 1993) (holding HAMILTON primarily merely a surname and stating, “unless there is a readily recognized meaning for a term apart from its surname significance, the fact that other meanings for the term exist does not necessarily indicate that the term would have a primary meaning to the

---

<sup>35</sup> April 7, 2021 Office Action, TSDR 12-13.

<sup>36</sup> April 7, 2021 Office Action, TSDR 13.

<sup>37</sup> May 6, 2022 Req. for Recon., TSDR 62-86. *See also* April 7, 2021 Office Action, TSDR 13.

<sup>38</sup> October 7, 2021 Req. for Recon., TSDR 18-47.

purchasing public other than that of its ordinary surname significance. ... [T]he geographical meaning of the term ‘HAMILTON’ is relatively minor.”). There is little or no evidence in the record regarding the significance of the identified geographical locations, and whether the numbers of visitors include repeat visitors. We therefore find that Applicant has not established that they are well-known or popular, and instead, find they are localized uses that would not generally be known by U.S. consumers. We therefore find them to have minor geographical significance.

With regard to the Harriman Hiking Trail, Harriman Glacier in Alaska, three stations in New York,<sup>39</sup> Harriman Institute at Columbia University, and the first name of the fictional character Admiral Harriman Nelson in the television show “Voyage to the Bottom of the Sea” (1964-1968), we find the evidentiary record lacking or unpersuasive as to their present-day notoriety and significance to the purchasing public of Applicant’s identified services.

Based on the foregoing, we find that “Harriman” does not have a recognized meaning other than as a surname.

#### **4. Whether HARRIMAN has the “structure and pronunciation” of a surname**

Whether a term has the structure and pronunciation of a surname is a “decidedly subjective” inquiry. *In re Eximius Coffee*, 120 USPQ2d at 1280 (quoting *In re Benthin Mgmt.*, 37 USPQ2d at 1333). As the Board noted in *In re Olin Corp.*,

---

<sup>39</sup> April 7, 2021 Office Action, TSDR 12-13. The three stations are identified as “a metro station in Harriman, New York,” “a former [Erie Railroad] metro station in Harriman, New York” and the “original name of Greystone station in Yonkers, New York City” (with no indication when the name was changed to Greystone station). *Id.*

124 USPQ2d 1327, 1332 (TTAB 2017), “applicants and examining attorneys may submit evidence that, due to a term’s structure or pronunciation, the public would or would not perceive it to have surname significance.”

Applicant points out that English words that end with “-man” exist and that due to this structure, it is not likely that Harriman would be perceived as a surname.<sup>40</sup> Applicant relies in part on webpages from thefreedictionary.com which address “[w]ords that end in man.”<sup>41</sup> These words generally have as a prefix another English language word (for example, repair, patrol and signal) and, as a whole, have English language meaning. “Harriman” has no such prefix. The argument and supporting evidence hence is not persuasive.

The Examining Attorney relies on webpages from ancestry.com<sup>42</sup> to support her contention that the term has the structure of a surname. The website states, in relevant part, that a “name ending in -man or -er usually reflects an occupation, such as Chapman (a shopkeeper), Bowman, Dauber (a plasterer), or Turner (someone who ran a lathe).”<sup>43</sup> We agree with the Examining Attorney that the term “Harriman” has the structure and pronunciation of a surname through its inclusion of the suffix “man.”

---

<sup>40</sup> 6 TTABVUE 11-12.

<sup>41</sup> October 7, 2021 Req. for Recon., TSDR 54-62.

<sup>42</sup> April 7, 2021 Office Action, TSDR 8-11.

<sup>43</sup> April 7, 2021 Office Action, TSDR 31.

1. Additional Terms and Primary Significance of the Proposed Mark as a Whole

The term HARRIMAN alone is not the entirety of Applicant's proposed mark. The proposed mark is THE HARRIMAN HOTEL and "[t]he test for determining whether a mark is primarily merely a surname is the primary significance of the mark as a whole to the purchasing public." *In re Hutchinson Tech. Inc.*, 852 F.2d 552, 7 USPQ2d 1490, 1492 (Fed. Cir. 1988), *see also*, *Azeka Bldg. Corp. v. Azeka*, 122 USPQ2d 1477, 1481-82 (TTAB 2017).

Applicant and the Examining Attorney differ on the significance of the term THE in the proposed mark. In this regard, both discuss the non-precedential Board case, *In re IMH Columbia, LLC*, (Ser. No. 88094045) (TTAB 2020), involving the mark THE MERRIWEATHER for "hotel services." There, the Board stated as follows in reversing a Section 2(e)(4) refusal:

[T]he Board has long and often found that because the word "the" is a definite article mostly used to denote a particular object, the word generally has almost no trademark significance, particularly in the case of a likelihood of confusion or descriptiveness analysis. *See, e.g., In re Thor Tech Inc.*, 90 USPQ2d 1634, 1635 (TTAB 2009); *In re The Place, Inc.*, 76 USPQ2d 1467, 1468 (TTAB 2005) (definite article THE adds "no source-indicating significance to the mark as a whole"); *In re Narwood Prods., Inc.*, 223 USPQ 1034 (TTAB 1984); *Jay-Zee, Inc. v. Hartfield-Zodys, Inc.*, 207 USPQ2d 269, 271-71 (TTAB 1980); *United States Nat'l Bank of Oregon v. Midwest Savings and Loan Ass'n.*, 194 USPQ2d 232 (TTAB 1977). Nevertheless, this does not mean that we can overlook any role the word may play in determining whether consumers will perceive Applicant's mark THE MERRIWEATHER as primarily merely a surname. Indeed, as the Court of Appeals for the Federal Circuit instructed in *Hutchinson*, we must "consider[] what the purchasing public would think when confronted with the mark as a whole." 7 USPQ2d 1492.

Here, we find the word “the” in THE MERRIWEATHER diminishes the likelihood that a prospective purchaser of hotel services would perceive the mark as primarily merely a surname. We disagree with the Examining Attorney’s contention that, in this context, the mark “denotes a particular person” with the surname “Merriweather.” That is, it would be somewhat nonsensical or grammatically improper to reference a single person by a surname and prefaced by “the,” without additional explanation or reason given. Because “Merriweather” is singular and prefaced by “the,” it is more likely the relevant public would believe the mark is merely identifying the physical hotel. In this regard, Applicant’s evidence regarding other hotel names prefaced by the word “the” is probative because it helps show that consumers often encounter names of hotels or buildings that begin with the word “the.” Put simply, the structure of the mark THE MERRIWEATHER, in the context of an uncommon name and one with other meanings, is such that consumers may not perceive it as primarily merely a surname.<sup>44</sup>

“Non-precedential decisions are not binding on the Board.” *In re Medline Indus., Inc.*, 2020 USPQ2d 10237, \*3 n.23 (TTAB 2020). Also, the discussion in *IMH Columbia* does not apply to the present case because the record there included evidence of use of hotel names prefaced by the word “the,” which we do not have here. Our record includes the registrations discussed above, but registrations are not evidence of use of the marks. See *In re Midwest Gaming & Ent. LLC*, 106 USPQ2d 1163, 1167 n.5 (“[T]he mere existence of third-party registrations is not evidence that the registered marks are actually in use or that the public is familiar with them.”) (citing *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)).

---

<sup>44</sup> Decision, pp. 14-15.

Thus, we do not have here the evidence that supported the Board's conclusion in *IMH Columbia*.

Additionally, the mark in *IMH Columbia* did not include the term HOTEL. The addition of the word HOTEL changes the primary significance of terms consisting of a surname preceded by the word THE. We see little difference between the impact on the purchasing public of THE HARRIMAN HOTEL and HARRIMAN HOTEL, the latter having the format found in the proposed marks involved in *Six Continents*, 2022 USPQ2d 135 (holding ATWELL SUITES primarily merely a surname for various hotel services, applicant had disclaimed SUITES) and *In re Woolley's Petite Suites*, 18 USPQ2d 1810 (TTAB 1991) (holding WOOLLEY'S PETITE SUITES for hotel and motel services primarily merely a surname); *see also Mitchell Miller, P.C. v. Miller*, 105 USPQ2d 1615, 1622 (TTAB 2013) (holding MILLER LAW GROUP primarily merely a surname for legal services, noting that LAW GROUP is a generic designation for a law firm); *In re Hamilton Pharms.*, 27 USPQ2d at 1944 (holding HAMILTON PHARMACEUTICALS primarily merely a surname for pharmaceutical products); *In re Cazes*, 21 USPQ2d 1796, 1797 (TTAB 1991) (holding BRASSERIE LIPP primarily merely a surname for restaurant services). Applying one of the definitions of "the," *i.e.*, "used as a function word to indicate that a following noun or noun equivalent is definite,"<sup>45</sup> we find that the term THE in the proposed mark merely specifies a specific hotel, the HARRIMAN HOTEL.

---

<sup>45</sup> See <https://www.merriam-webster.com/dictionary/the>, accessed on March 15, 2023. We take judicial notice of this definition of "the."

We find that the wording THE and HOTEL does not change the surname significance of the proposed mark. Combining a surname, such as HARRIMAN, with the generic name for the services, i.e., HOTEL, and adding the term THE, does not overcome the proposed mark's surname significance. In other words, THE and the disclaimed term HOTEL "add[] nothing in the way of trademark significance to the surname [HARRIMAN]. Consequently, the term, [THE HARRIMAN HOTEL], in its entirety, is primarily merely a surname and unregistrable on the Principal Register under Section 2(e)(4)." *In re Woolley's Petite Suites*, 18 USPQ2d at 1812.

## **B. Conclusion**

In view of the foregoing, we conclude that THE HARRIMAN HOTEL is primarily merely a surname as contemplated under Section 2(e)(4). The evidence of record shows that HARRIMAN has surname significance. Any other significance of HARRIMAN does not eclipse the surname significance of the term. Moreover, the term HOTEL is a generic word that has been disclaimed, and THE and HOTEL do not change or detract from the surname significance of HARRIMAN. THE and HOTEL "add[] nothing in the way of trademark significance to the surname [HARRIMAN]." *Id.* We conclude that the primary significance of THE HARRIMAN HOTEL is merely that of a surname.

**Decision:** The refusal to register Applicant's proposed mark THE HARRIMAN HOTEL under Section 2(e)(4) is affirmed for all three International Classes.